

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PACIFICARE OF WASHINGTON, INC.,

Plaintiff,

v.

MIKE LEAVITT, in his capacity as Secretary
of the United States Department of Health
and Human Services,

Defendant.

Case No. C05-0059 RBL

SECOND AMENDED STIPULATION
AND ORDER ESTABLISHING
BRIEFING SCHEDULE

On January 13, 2005, Plaintiff Pacificare of Washington, Inc. ("PacifiCare") filed this action appealing the decision of the Secretary of the Department of Health and Human Services (the "Secretary") dated November 18, 2004 allowing coverage of certain medical care provided to Bobby Atkins pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1395w-22(5).

The parties are in agreement that the above-entitled case, as presently pled constitutes "an action for review on an administrative record" within the meaning of Rule 26(a)(1)(E)(i), Fed. R. Civ. P., and therefore exempt from the requirements of Rule 26(a) Fed. R. Civ. P. regarding "lay down" discovery, and Rule 26(f), Fed. R. Civ. P., regarding participation in a discovery conference and formulation of a discovery plan.

On March 21, 2005, this Court entered an Order vacating the portion of the February 14, 2005 Order requiring a Joint Status Report.

1 On June 14, 2005 the Court entered an Order establishing a briefing schedule for the parties in this
2 case to file cross-motions for summary judgment. This Order envisaged that the parties would file their
3 briefs only after mediation efforts in a related case (Atkins v, Pacificare, 04-cv-5889-RBL) had been
4 completed, as settlement of the related case probably would result in the settlement of this case.
5 Unfortunately, the parties in the related case were not able to schedule a mediation session until the first
6 week in August. Counsel for the parties in this case have conferred and agree that it would be in the
7 interests of justice for their briefing schedule to be continued for two weeks, until after the mediation
8 efforts in the related case have concluded.

9 Accordingly, counsel for the parties in this case have reached the following agreement for an
10 amended schedule for the briefing and submission of cross-motions for summary judgment and do hereby
11 stipulate that the Court may make and enter an Order providing that:

- 12 1. Defendant shall file and serve its motion for summary judgment and supporting
13 memorandum on or before August 15, 2005 (not to exceed 40 pages);
- 14 2. Plaintiff shall file its memorandum in opposition to Defendant's motion for summary judgment
15 and any cross-motion for summary judgment no later than Tuesday, September 16, 2005 (not to exceed 40
16 pages);
- 17 3. Defendant shall file any reply memorandum and its opposition to any cross-motion for summary
18 judgment filed by Plaintiff no later than Friday, September 9, 2005 (not to exceed 24 pages);
- 19 4. Plaintiff shall file any reply memorandum by no later than Friday, September 30, 2005 (not to
20 exceed 24 pages);
- 21 5. Both Defendant's motion for summary judgment and any cross-motion for summary judgment
22 filed by Plaintiff shall be noted on Court's motion calendar for September 30, 2005.

23 **SO STIPULATED**

24 Dated this 26th day of July, 2005.

25 LANE POWELL PC

26 By s/Barbara J. Duffy
27 Barbara J. Duffy, WSBA No. 18885
28

Attorneys for Plaintiff

JOHN MCKAY
United States Attorney

By s/Peter Winn
Peter Winn, WSBA No. 34701
Assistant United States Attorney
Attorneys for Defendant

IT IS SO ORDERED

DATED this 27th day of July, 2005.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE